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- (c) When an applicant presents a claim which corresponds exactly or substantially to a claim of a patent, the applicant shall identify the patent and the number of the patent claim, unless the claim is presented in response to a suggestion by the examiner. The examiner shall notify the Commissioner of any instance where an applicant fails to identify the patent.
- (d) A notice that an applicant is seeking to provoke an interference with a patent will be placed in the file of the patent and a copy of the notice will be sent to the patentee. The identity of the applicant will not be disclosed unless an interference is declared. If a final decision is made not to declare an interference, a notice to that effect will be placed in the patent file and will be sent to the patentee.

[49 FR 48416, Dec. 12, 1984, added effective Feb. 11, 1985; para. (a) amended, 53 FR 23735, June 23, 1988, effective Sept. 12, 1988; para. (a)(5)(i) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; para. (a)(4) revised, para. (a)(6) added, 60 FR 14488, Mar. 17, 1995, effective Apr. 21, 1995]

§ 1.608 Interference between an application and a patent; *prima facie* showing by applicant.

- (a) When the effective filing date of an application is three months or less after the effective filing date of a patent, before an interference will be declared, either the applicant or the applicant's attorney or agent of record shall file a statement alleging that there is a basis upon which the applicant is entitled to a judgment relative to the patentee.
- (b) When the effective filing date of an application is more than three months after the effective filing date of a patent, the applicant, before an interference will be declared, shall file evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is *prima facie* entitled to a judgment relative to the patentee and an explanation stating with particularity the basis upon which the applicant is *prima facie* entitled to the judgment. Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible, and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would *prima facie* entitle the applicant to judgment on priority with respect to the effective filing date of the patent. To facilitate preparation of a record (§ 1.653(g)) for final hearing, an applicant should file affidavits on paper which is 21.8 by 27.9 cm. (8 1/2 x 11 inches). The significance of any printed publication or other document which is self-authenticating within the meaning of Rule 902 of the Federal Rules of Evidence or § 1.671(d) and any patent shall be discussed in an affidavit or the explanation. Any printed publication or other document which is not self-authenticating shall be authenticated and discussed with particularity in an affidavit. Upon a showing of good cause, an affidavit may be based on information and belief. If an examiner finds an application to be in condition for declaration of an interference, the examiner will consider the evidence and explanation only to the extent of determining whether a basis upon which the application would be entitled to a judgment relative to the patentee is alleged and, if a basis is alleged, an interference may be declared.

[49 FR 48416, Dec. 12, 1984, added effective Feb. 11, 1985; revised, 60 FR 14488, Mar. 17, 1995, effective Apr. 21, 1995]

§ 1.609 [Reserved]

[49 FR 48416, Dec. 12, 1984, added effective Feb. 11, 1985; paras. (b)(1)-(b)(3) revised, 60 FR 14488, Mar. 17, 1995, effective Apr. 21, 1995; removed and reserved,